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Supreme Court, U.S.
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No. 09-___

IN THE
**Supreme Court of the United States**

MICHAEL HALLIWELL & JAMES PARKER,

*Petitioners,*

v.

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SONOMA,

*Respondent,*

CHRYSANTHE PAXINOS,

*Real Party in Interest*

On Petition for a Writ of Certiorari
To the California Supreme Court

# PETITION FOR A WRIT OF CERTIORARI

Michael J. Halliwell & James F. Parker
Defendants in Propria Persona
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August 10, 2009

## QUESTIONS PRESENTED

**1. Right to knowledgeable representation precludes interference with case management** Does a Defendant's right to knowledgeable exercise of his rights (as affirmed in *Gideon v Wainwright*) bar requiring evicted Defendants to "switch horses in the middle of the stream" by precluding participation in subsequent attorney fees litigation by a Defendant whose conduct of pre-trial and trial proceedings is the basis for the fees being sought.

**2. Unadjudicated Refusal to Allow Self-Represented Defendants to Conduct Own Case** Can the right to payment by the opposing side for defending a fees judgment on appeal, be upheld if a party aggrieved by a denial of standing in attorney fees proceedings is not allowed to seek appellate review of such trial court rulings (in violation of CCP § 902, and governing precedents such as *Nelson v Adams*, *County of Alameda v Carleson*, *Varian Medical Systems, Inc. v Delfino*, *Aires Development Co. v Coastal Zone Conservation Commission*, *Conservatorship of Stewart*, and *In re Catherine H*)?

**3. Continuing Judicial Action in Violation of Stay per December 22, 2008 Standing Appeal** CCP § 916(a) deprives a judge whose order has been appealed of jurisdiction to proceed with aspects of the case related to such appeal. The refusal of the Appellate Branch to take cognizance of Defendants' December 22, 2008 appeal ($280 appeal fee check #3131) from continuing judicial refusal to allow them to conduct their case as per *Gray v Justice's Court* still continues, even though the Hearing Transcripts and Chronological Index needed to initiate appeal briefing are both available.

**4. *Ex Post Facto* Application of CCP § 391**
Can prior restraint restrictions on "new litigation" pursuant to California's CCP § 391 be applied retroactively, to invalidate a Notice of Appeal filed five weeks before the Vexatious Litigant Finding is made. Where a trial court judge allows a Plaintiff to completely evade legal issues raised by Defendants, and makes no rulings on these issues herself, can Notices of Appeal based on a February 10, 2009 fees award and/or an April 3, 2009 Writ of Execution be barred as "new litigation" by a Vexatious Litigant Finding promulgated on April 17, 2009?

**5. Automatic set-aside of all submissions by those labeled Vexatious Litigants by CCP § 391**
In Sonoma County Superior Court, self-represented litigants, who have been labeled by that Superior Court as Vexatious, have no rights which a Presiding Judge of that Court need respect. Manifestations of this policy include: **a)** Refusal to take cognizance of a Notice of Appeal from an April 17, 2009 Vexatious Litigant Finding presented and paid for on May 13, 2009, within the 30 day period set by CRC 8.751(a), with no acknowledged judicial action or indication in the Case File, that the appeal was submitted. **b)** During the last 10 weeks of the tenure of Presiding Judge Knoel Owen (April 20, 2009 to June 30, 2009) all documents submitted by Defendants in *Paxinos v Halliwell & Parker* were sent to Judge Owen for approval or rejection, but no action was taken on any of these attempted filings. Since June 30, 2007 the new Presiding Judge Gary Nadler has "pushed back" all attempted filings by Halliwell and Parker, with no indication in the case file of the reason for his rejections, or even acknowledging our submissions.

**6. Premature OEX & Single-Action CCP § 391 Abuse to Deny Proper Preparation Time**
The pressure on self-represented Defendants from a two-front squeeze created by the timing of briefing schedules for $10,118 and $20,720 fees appeals has been greatly aggravated by eight premature Order of Examination hearings seeking the immediate enforcement of fees awards (contrary to CCP § 916(a) stay provisions) and Judge Rushing's Vexatious Litigant Order to Show Cause, timed to coincide with a hearing on yet another ($19,000) fees motion. Why should self-represented litigants not be accorded the same consideration with respect to competing courtroom and brief preparation demands on their time, as is routinely accorded to attorneys?

**7. Disregard of automatic stays without posting an appeal bond provided by State law**
Where State statute (CCP § 916(a)) and case law (*Betz v Pankow*) provide for an automatic stay of enforcement of judgments which are not yet final, and exempts judgments which consist entirely of attorney fees and other costs from the posting of an appeal bond (CCP § 917.1(d), *Ziello v Superior Court* and *Nielsen v Stumbos*), is premature enforcement a violation of Due Process of Law and Equal Protection guarantees of the Fourteenth Amendment?

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## PETITION FOR A WRIT OF CERTIORARI

This Petition for Certiorari to the California Supreme Court seeks review of the latest phase of a protracted procedural siege which has required more than two years of full time effort by Defendants (two self-represented tenants), to try to keep from being overwhelmed by attorney fees awards (which now exceed $50,000).

On October 2, 2007 (when this litigation was four months old) the California Supreme Court held a televised special session in Sonoma County, at which every member of that Court emphasized the importance of the Rule of Law. So far there has been no tangible expression of such a commitment, other than our State High Court's willingness to accept detailed documentation of the quagmire which this case has become. This Petition does not suggest that the United States Supreme Court try to unravel the

procedural Gordian Knot which this case has become, but seeks only some respite from rogue judicial action (which never cited any supporting caselaw, and increasingly is not even reflected in the Case Record). During such a respite Plaintiff's counsel and the Sonoma County Superior Court should be allowed to try to explain actions which Defendants argue are not merely legally incorrect, but in fact are gross violations of ethical standards for attorneys and judges.

A remand to Federal District Court will have salutary effects, no matter what the underlying facts of this case truly are. If trying to resist Homeowner's Association CC & R's (Conditions, Covenants and Restrictions), which allow a tenant to be condemned anonymously, without having a right to even attend such a proceeding, is indeed compatible with Equal Justice Under Law, as the Federal Courts define it, a

warning to this effect is needed. On the other hand, if the total refusal of various members of the Sonoma County Superior Court to address any of defendants' numerous grievances, turns out to be due to their not having any justification for their treating the Defendants in *Paxinos v Halliwell & Parker* as a Vexatious nuisance, this reality needs to be exposed, so that appropriate corrective action can be taken.

The Statement of the Case in this Petition tries to avoid overlapping our April 20, 2009 and May 18, 2009 Petitions for Certiorari. The three main grievances (with seven aspects noted in our Questions Presented) cited by Defendants are matters of pressing concern which has escalated since our two previous Petitions. They are A) refusal to allow Defendants to even present their case, B) creating an unappealable Vexatious Litigant Order which leaves Defendants with fewer enforceable

rights than Civil Rights litigants in the era of Massive Resistance in some former Confederate States, and C) enforcement of Attorney Fees Awards piled one upon another, which are supposed to be automatically stayed (without an appeal bond) until all appeals have been exhausted.

## OPINION BELOW

The focus of this appeal is the various tactical maneuvers by Plaintiff's counsel and the Sonoma County Superior Court to procedurally overload Defendants, while they were preparing their April 20, 2009 and May 18, 2009 Petitions for Certiorari re Judge Rushing's $10,118 and $20,720 attorney fees awards. Defendants responded with their (S170538) February 17, 2009 Petition for Mandamus relief to the California Supreme Court. (The issues and cases in this Petition and its Appendix are referenced in Tables in Appendix at 7-18 and 81-97). The transfer

(in light of *Hagans v Superior Court*) Order of March 24, 2009 (Appendix at 239), Defendants' *Hagans* briefs (Appendix at 241-280) and the First District Court of Appeal Mandamus Denial (A124403, Appendix at 240), left a situation where Defendants needed to update their proposed procedural relief (Appendix at 281-392). The California Supreme Court accepted (Appendix at 393) Defendants' supplemental filings and assigned a new case number (S171792). Five weeks later the California Supreme Court denied review (Appendix at 394).

## JURISDICTION

On April 6, 2009 the California Supreme Court assigned S171792 to Defendants' update of their Petition for Mandamus, accepted their accompanying Appendix and issued a briefing schedule for response by opposing parties. However, neither Respondent (Sonoma County Superior

Court) nor Real Party in Interest (Plaintiff's attorney Charles Jensen) offered any response. On May 13, 2009, the California Supreme Court's ruling said only "The petition for review is denied."

The deadline under 28 U.S.C. § 1257 to Petition for Certiorari to the California Supreme Court is August 11, 2009.

## RELEVANT STATUTORY PROVISION

No Sonoma County Superior Court opinion has even addressed the governing precedents cited by Defendants (or provided any reference of their own to case law), much less tried to apply them to the circumstances of *Paxinos v Halliwell & Parker*. The State Appeal Courts with discretionary review power, have always declined to exercise it, without any explanation. Therefore, interpretation of state law is not a factor in this appeal. Defendants seek only application of well settled rights under State

law, as they are guaranteed by the Equal Protection Clause of the Fourteenth Amendment.

The well established legal standards whose protection is FEDERALLY MANDATED for every person within the jurisdiction of California courts, includes these governing precedents, cited in our March 20, 2009 Petition to the California Supreme Court (Appendix at 177): *Hall v Superior Court* (2005) 133 Cal.App.4th 908, 919 affirms:

> Court rules should be designed to accomplish the ends of justice, to protect rights, and to implement the substantive law. When a policy, practice or rule operates instead to defeat these purposes, and deprives an accused of a fair trial or determination on the merits, then the policy, practice or rule must give way.

*Adams v Murakami* (1991) 54 Cal 3d 105, 120 states:

> The issue is not merely a question of trial strategy. As our former colleague Justice Peters aptly put it, "**The trial of a lawsuit is not a game where the spoils of victory go to the clever and technical regardless of the merits**, but a method devised by a

> civilized society to settle peaceably and justly disputes between litigants. The rules of the contest are not an end in themselves." (*Simon v City of San Francisco* (1947) 79 Cal.App.2d 590, 600)

Defendants March 12, 2009 Appendix H to the California Supreme Court notes (at 114:1-9):

> *Babb v Superior Court of Sonoma County* (1971) 3 Cal 3d 841, 851 provides for the issuance of a writ of mandate where "there is not a plain, speedy, and adequate remedy, in the ordinary course of law." (CCP Sec 1086).....
>
> The *Babb* opinion emphasizes the Court's reluctance "to employ prerogative writs" for ongoing proceedings, saying: "Indeed, we perform such a function of intermediate view with extreme reluctance." However, *Babb* continues: "However, upon occasion our attention is drawn to instances of such grave nature or of such significant legal impact that we feel compelled to intervene through the issuance of an extraordinary writ. (See *Holz v Superior Court* (1970) 3 Cal 3d 296, 301, fn 4.)" In *Holz, supra*, the High Court ruled: "Where it appears that the trial court has made a ruling which deprives a party of the opportunity to plead his cause of action or defense, relief by mandamus may be appropriate."

Our Mandamus request fits this standard.

## STATEMENT OF THE CASE

### A. Interference with Case Management

#### 1. Right to knowledgeable representation

Defendants' March 27, 2009 Update re California Supreme Court transfer of S170538 (Appendix at 267), cites a Defendant's right of self-representation affirmed in *Faretta v California* (1967) 422 U.S. 806, 812-813 and the similar mandate of *Gray v Justice's Court* (1937) 18 Cal.App.2d 420, 423. Defendants quote the September 25, 2007 Fees Hearing Transcript (at 466:21 to 467:8) to show how Judge Rushing completely silenced Defendant Halliwell (not even allowing him to explain why he had standing), citing no authority for this edict other than "it's in the law library and all the practice books." (Id. at 14)

Defendants' May 5, 2009 Reply to Prior Restraint imposed by Judge Beaupre's Order states:

> Where secrecy is a deliberate device for making it difficult for unlawful detainer defendants to learn of their rights, the logic of *Gideon v Wainwright* (1963) 372 U.S. 335, 345 applies. In Unlawful Detainer actions, 90% of defendants are self represented, so this aspect of *Gideon, supra,* provides a close parallel: "*Even the intelligent and educated layman has small and sometimes no skill in the science of law.*" It is the purpose of CCP § 1161.2(c) to keep consultants from remedying this situation. And in Sonoma County Superior Court, the fortified version of this statute nearly guarantees the tenant will lose, thus creating another Gideon parallel: "*He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one.*" (Id. at 22)

Even when Defendants were able to figure out what procedures the Sonoma County Superior Court required them to follow, these procedures were often abrogated where necessary to keep unrepresented litigants from effectively presenting their case. An important incident involving the judge (Gary Nadler) originally assigned to *Paxinos v Halliwell & Parker* (who continues to have an influential role in the case

because he is now Presiding Judge of the Sonoma County Superior Court), is an example of this bias.

Defendants' June 14, 2007 Form UD-150 Counter-Request To Set Case For Trial is a very important document in terms of its implications. The existence of such a document with such a date shows the ridiculous nature of Judge Nadler's initial decision to convert the lawsuit into a court trial because the address of the property in dispute was not repeated in #2 just above the two seeming alternative "a" and "b" check boxes. This redundancy was included in the form to provide a landlord who may have several evictions going on at once, a quick way to tell which was which, IF THE TENANT WERE NOT SELF REFPRESENTED, AND THE ADDRESS AT THE TOP OF THE FORM WAS THAT OF HIS LAWYER. This is not a case of a Judge who made a good faith mistake, with respect

to the intent of a rule. It is a case of a judge determined to favor the landlord as much as he could, who had to back down because he had no case to counter clear-cut governing precedents, such as that cited in our June 8, 2009 Memo (at 5:15-16): "The law aspires to respect substance over formalism and nomenclature." (*City of Shasta Lake v County of Shasta* (1999) 75 Cal.App.4th 1, 11).

Another example is Judge Nadler's policy of not allowing oral argument and disposing of tenants' pre-trial motions via Ex Parte Applications.

The Judges of Sonoma County Superior Court are apparently determined to avoid a repeat of what happened in *Elkins v Contra Costa County Superior Court* (2007) 41 Cal 14th 1337. The routine denial of oral argument under Sonoma County Superior Court Local Rules for Ex Parte Applications is vulnerable under *Elkins*, which struck down a Contra Costa

Family Court affidavits-only procedure. In *Elkins* oral argument, Justice Kennard cited *Goldberg v Kelly* (1970) 397 U.S. 254, 268-269, which affirms:

> [The person facing property deprivation] is not permitted to present evidence to the official orally, or to confront or cross-examine adverse witnesses. *These omissions are fatal to the constitutional adequacy of the procedures. The opportunity to be heard must be tailored to the capacities and circumstances of those who are to be heard.* Particularly where credibility and veracity are at issue, as they must be in many termination proceedings, **written submissions are a wholly unsatisfactory basis for decision.** (Emphasis added.)

Defendant Halliwell explains the implications of being denied oral argument:

> *Moles v Regents of University of California* (1982) 32 Cal 3d 867, 872 observes:
>
> Oral argument provides the only opportunity for dialogue between the litigant and the bench. As a result, "it promotes understanding in ways that cannot be matched by written communication." (Commission on Revision of Federal Court Appeals System, Structure and Internal Procedures: Recommendations for Change (1975) p. 48.) For example, in complex cases, oral argument "provides a fluid

> and rapidly moving method of getting at essential issues." (ABA Committee on Standards of Judicial Administration, Standards Relating to Appellate Courts. (Approved Draft 1977) p. 56.) In the words of one judge, "Mistakes, errors, fallacies and flaws elude us in spite of ourselves unless the case is pounded and hammered at the Bar." (Cutler, Appellate Cases: the Value of Oral Argument (1958) 44 A.B.A.J. 831, 832; see generally Stern, Appellate Practice in the United States (1981) pp. 358-359.) No proof of the value of oral argument is more compelling, however, "than the fact that many judges find that the opportunity for a personal exchange with counsel makes a difference in result." (Commission on Revision of the Federal Court Appeals System, Structure and Internal Procedures: Recommendations for Change, *supra*, at p. 47.) This aspect of oral argument – the chance to make a difference in result – is extremely valuable to litigants.

The undisputed basis for adverse impact on Defendant Michael Halliwell of past and potential future attorney fees awards, and his satisfying the other two prongs of the *Powers v Ohio* (1991) 499 U.S. 400, 410-411 *jus tertii* standing criteria are

documented in quotations from California Supreme Court filings in Appendix at 173-174.

When Charles Jensen brought forward his $20,720 reading-fee motion, Judge Rushing would not allow Defendant Halliwell to participate in the hearing on that motion, without even discussing how this ruling related to governing precedents on standing (such as *Powers v Ohio* (1991) 499 U.S. 400, 410-411, 413-414). At this May 6, 2008 Hearing, Defendant James Parker protested: "Since the Court has never cited any case law as to why Michael Halliwell has not been allowed to speak, I would ask the Court to cite some case law as to why not." (Transcript at 5:10-12) Judge Rushing replied: "I'm not required to do so and I decline that request." (Ibid at 5:13-14)

Defendants' March 27, 2009 Update re California Supreme Court transfer of S170538

(Appendix at 268) cites appeal briefing where Charles Jensen concedes that Defendant Halliwell is adversely affected by any attorney fees award to Plaintiff's counsel. This Update notes that, in not allowing any input at all from the Defendant who conducted the proceedings for which fees shifting is sought (September 25, 2007 Hearing Transcript at 473:3-14), Judge Rushing violated the mandate of *Singleton v Wulff* (1976) 428 U.S. 106, 113-114: "*The courts depend on effective advocacy, and therefore should prefer to construe legal rights only when the most effective advocates of those rights are before them.*" (Id. at 14)

**2. Aggrieved party's CCP § 902 rights**

Defendants' May 13, 2009 Appendix (at 46:6-19) discusses the handling of standing on appeal:

> At the September 25, 2008 Appeal Hearing, Judge Chouteau launched a broad attack

(Transcript 3:15 to 4:1) on Defendants' right to argue their case as they had prepared to do:

> #1: Judge Chouteau said: "Now at this time, this is an appeal at least of an attorney's fees award against Mr. Parker, not against Mr. Halliwell." *Warth v Seldin* (1975) 422 U.S. 490, 504 provides: "The fact that harm to petitioners may have resulted indirectly does not, by itself, preclude standing."
>
> #2: Judge Chouteau continued: "Mr. Parker do you wish to add anything." James Parker responded: "Yes. I would like to have Mr. Halliwell speak." Judge Chouteau responded: "He cannot argue on your behalf. He is not an attorney." In *Craig v Boren* (1976) 429 U.S. 190, 195, the beer manufacturer had the right to argue, in behalf of his interest in increasing beer sales, the right of his potential customers to gender equality in the drinking age.
>
> #3: Judge Chouteau said to James Parker: "If you want to present something in addition to your papers, you may do that." James Parker responded: "Okay. Since I did not expect to be the one to talk, I would like to read my argument into the record." Judge Chouteau replied: "No. You may not read an argument. Sir, if you have additional information to provide in

> addition to your briefs, you may do so. I don't want you simply reading something Mr. Halliwell prepared."

Defendants' May 13, 2009 Notice of Appeal (at 100:20 to 101:2, quoted in Appendix at 182-183) shows a strong parallel between our standing issue and key precedents evaded here by Judge Chouteau.

After Judge Chouteau continued to disregard Defendant Halliwell's right as an aggrieved party to challenge Judge Rushing's ruling, at the next Appeal Hearing, Defendants' raised the issue of Judge Chouteau's right to take part in the panel which would consider a challenge to Judge Rushing's right to adjudicate a third fees motion (in a February 2, 2009 Petition to Sonoma County Superior Court Presiding Judge Knoel Owen). However, Judge Owen waited three weeks until (February 25, 2009) after the third fees hearing had already taken place,

and ruled our petition "procedurally insufficient" without explaining why.

Defendants' March 20, 2009 California Supreme Court Memorandum, updating their March 17, 2007 OEX Hearing Stay Motion, discusses a key aspect of those proceedings:

> Co-Defendant Michael Halliwell was also present, and must reimburse Defendant Parker for any fees he pays, according to a long standing agreement that is as binding as any contractual fees obligation that James Parker may be thought to have under the rental agreement (see *Nelson v Adams* (2000) 529 U.S. 460, 472 parallel [Appendix at 175-176]). But in accordance with the Court's continuing policy, Defendant Halliwell was silenced and not even allowed to sit at the Defendants' table. This exclusion was appealed, and our December 22, 2008 Notice of Appeal was acknowledged by the Appellate Branch that same day. Since a court cannot (consistent with CCP Sec 916) take action on any aspect of a case covered by an appeal, it cannot continue to conduct proceedings in a manner violative of Defendants' right to conduct their own case (see *Gray v Justice's Court* (1937) 18 Cal.App.2d 420, 423 citation [Appendix at 167-168]). (Id. at 3)

**3. Ignoring December 22, 2008 appeal**

Defendants' March 27, 2009 Update re California Supreme Court transfer of S170538 (Appendix at 250-251) cites continuing violation of *Gray v Justice's Court* (1937) 18 Cal.App.2d 420, 423, which affirms: "*regardless of legal requirements for the privilege of practicing law, 'the right of one to appear and conduct his own case is not affected.'*" Defendants' Update notes that their December 22, 2008 standing appeal and *Varian Medical Systems, Inc. v Delfino* (2005) 35 Cal 4th 180, 190 bars this continued violation of their procedural rights. *Varian* affirms: "if the possible outcomes on appeal and the actual or possible results of the proceeding are irreconcilable . . . *that proceeding must be stayed under section 916, subdivision (a).*" (Id. at 5-6)

Defendants' Update continues (Appendix at 268-269) to cite the mandate of *Warth v Seldin*

(1975) 422 U.S. 490, 504, that the indirectness of an injury does not preclude standing. This Update cites further governing precedents (*Powers v Ohio* (1991) 499 U.S. 400, 410-411, *Aries Development Co. v Coastline Coastal Zone Conservation Commission* (1975) 48 Cal.App. 3d 534, 542, *County of Alameda v Carleson* (1971) 5 Cal 3d 730, 736) resolutely ignored by the Sonoma County Superior Court Appellate Branch, in its defiance of Code of Civil Procedure Section 902. *Conservatorship of Stewart* (1969) 276 Cal.App.2d 211, 215, sums up Defendants' right to appeal Judge Rushing's denial of standing: "In other words, *a party is 'aggrieved' by an order, within the meaning of section 902, even if his grievance turns out to be legally without merit.*" (Id. at 14-15)

**B. Unfair Labeling as Vexatious Litigants**

**4. *Ex Post Facto* application of CCP § 391**

Defendants' March 27, 2009 Update re

California Supreme Court transfer of S170538 (Appendix at 251-252) points out that Judge Rushing's Vexatious Litigant Initiative cites a portion of CCP sec 391 which refers to "attempts to relitigate the validity of **final determinations or the issues therein**." This cannot possibly apply to an attorney fees award granted and appealed well BEFORE the April 17, 2009 Vexatious Litigant Order was handed down by Judge Beaupre. (Id. at 6)

Defendants' April 3, 2009 Petition for Review of Court of Appeal Mandamus Denial (Appendix at 297) notes that the thrust of Judge Rushing's "Vexatious Litigant" initiative is to attempt to shut down Defendants' discretionary appeals, on the theory that rulings in her favor by the Appellate Branch amount to final dispositions. However, neither Judge Rushing nor any of the Judges ruling

in her favor have EVER given ANY reasons for their rulings. (Id. at 10)

Defendants quote their analysis of the May 6, 2008 Fees Hearing Transcript (at 16:14 to 17:20 in Appendix at 415-416) which discusses how Judge Rushing refused to consider the validity of Plaintiff's only basis for being paid to read what he claimed was "whimsy, dribble and nonsense." This analysis quoted Charles Jensen's Fees Motion which argued: "Defendants forced plaintiff's counsel to read all of his papers. Unfortunately, counsel was not in a position to assume they were all a joke. An old Irish saying states: 'Even a blind pig can find a truffle every now and then.'" Judge Rushing flatly refused to require any substantiation of Charles Jensen's dismissive claims, saying: "I'm not going to force him to do that."

Defendants' April 9, 2009 California Supreme Court Appendix states:

> In his April 6, 2009 Amicus Curiae Brief in support of this initiative (at 7:15-22), Charles Jensen urges the Court to issue an order requiring permission of the presiding judge of the Superior Court to allow JAMES PARKER and/or MICHAEL HALLIWELL to "file any document . . . maintaining any pending action or proceeding (including the present action which is now finally determined)" even though Jensen himself is seeking an additional $19,000 in attorney fees (which has secured the approval of only Judge Rushing).
>
> Judge Rushing sidetracked Defendants' motion to stay her hearing on this $19,000 fees motion onto her March 24, 2009 Law & Motion Calendar, then cancelled this March 24, 2009 hearing and finalized her fees award with a Tentative Ruling (issued in violation of Local Rule 2.2D, and effectuated over Defendants' written request that the hearing be held). (Id. at 1)

Judge Dean Beaupre included the underlined language in his Vexatious Litigant Finding.

**5. Automatic set-aside of all submissions**

*Romer v Evans* (1996) 517 U.S. 620, 633,

precludes making legal *persona non grata* of litigants with the temerity to thoroughly document a Superior Court's undermining of the Rule of Law: "**Central both to the idea of the rule of law and to our own constitution's guarantee of equal protection is the principle that government and each of its parts remain open on impartial terms to all who seek its assistance.**" *Romer v Evans* (1996) 517 U.S. 620, 635, further explains why a stay of the Sonoma County Superior Court's obstruction of U.S. Supreme Court filing rules is justified: "**A state cannot so deem a class of persons a stranger to its laws.**"

When Defendants attempted to file their timely May 13, 2009 Notice of Appeal from the Order of April 17, 2009, we were referred by the window deputy clerk to Supervisor of Clerks (Donald G. Lewin), who asserted that unless it was accompanied

by a prefiling Order (certifying that the appeal was meritorious) our Notice of Appeal could not be filed. This application of the Order of April 17, 2009 made this order effectively unappealable, without the consent of the Court whose order the aggrieved party sought to appeal. Such a concept is antithetical to the Rule of Law, and is an attempt to exercise the sort of unbridled discretion stricken down by the U.S. Supreme Court in *Yick Wo v Hopkins* (1886) 118 U.S. 356, 373-374: "In fact, an ordinance which clothes a single individual with such power hardly falls within the domain of law, and we are constrained to pronounce it inoperative and void." After protracted discussion, Supervisor of Clerks Lewin accepted Defendants' May 13, 2009 Notice of Appeal and a check (#3187) for the $315 filing fee. Our Notice of Appeal was stamped "**RECEIVED BUT NOT FILED, MAY 13 2009**" (but we were

informed by Supervisor Lewin that he would forward it immediately to Presiding Judge Knoel Owen, who would make a ruling on our right to appeal). However, Defendants have received no response from Judge Owen on this (or any other subject related to the April 17, 2009 Vexatious Litigant Order), as of August 9, 2009.

Defendants' June 8, 2009 Memorandum (Appeal Briefing Issues re CCP § 916(a) Stay) quotes *Morton v Wagner* (2007) 156 Cal.App.4th 963, 970-971, which clearly shows that Vexatious Litigant Findings are appealable:

> Any determination that a litigant is vexatious must comport with the intent and spirit of the vexatious litigant statute. The purpose of which is to address the problem created by the persistent and obsessive litigant who constantly has pending a number of groundless actions and whose conduct causes serious financial results to the unfortunate objects of his or her attacks and places an unreasonable burden on the courts.

Defendants' June 8, 2009 Memo continues:

*Wolfgram v Wells Fargo Bank* (1997) 53 Cal.App.4th 43, 58 affirms: "Only those citizens who decline to hire lawyers, lose five suits in seven years, then undertake a sixth suit which lacks merit, will be labeled vexatious." Defendants' filing of motions for reconsideration before appealing cryptic Appellate Branch orders upholding fees awards, is NOT a legitimate part of a vexatious litigant finding. Thus *Morton v Wagner* (2007) 156 Cal.App.4th 963, 973 observes:

> In enacting California Rules of Court, Rule 8.108(d), which allows an extension of time to file a notice of appeal where the appellant has filed a motion to reconsider pursuant to section 1008, the Legislature expressed favor for motions to reconsider. . . . .
>
> All three of defendant's motions relied on established and favored procedures for petitioning the court to modify or reconsider their order. Once appellant moved to reconsider the original order, and that request was denied, he did not continue to petition the court for redress in suspicious or unconventional ways. He accepted the judgments and orders and sought redress from the reviewing court. Under these circumstances, the appellant cannot be found

> to have abused the process by filing unmeritorious and frivolous motions simply to harass the respondent. Therefore, these motions do not support a vexatious litigant designation.

When a Vexatious Litigant Statute is applied in a way which infringes fundamental constitutional rights, prior findings of constitutionality do NOT shield it from challenge. Thus the *Wolfgram v Wells Fargo Bank* (1997) 53 Cal.App.4th 43, 50 Court of Appeal observes: "We are unaware of any doctrine which insulates a statute from one constitutional attack, simply because it has survived a different constitutional attack." *Morton v Wagner* (2007) 156 Cal.App. 4th 963, 974, overturns an improper application of CCP § 391:

> The order designating appellant a vexatious litigant is reversed. The prefiling order requirement is hereby stricken. The clerk of this court is directed to forward a copy of this opinion to the Judicial Council with instructions that they remove appellant's name from the list of vexatious litigants. (Id. at 8-9)

Defendants' April 27, 2009 Motion to Vacate

Judge Beaupre's Vexatious Litigant Finding says:

Defendants' Response to Questions Presented concludes by examining the claim, in the Order of April 17, 2009 (at 6:15-17), that Defendants "repeatedly filed unmeritorious motions, pleadings or other papers, and engaged in tactics which were frivolous or solely intended to cause unnecessary delay." #23 shows that each of these elements of vexatiousness set forth in CCP § 391 finds a counterpart in the behavior of Judge Rushing and/or Charles Jensen. The Order of April 17, 2009 (at 2:13) flatly misstates the record in saying: "Defendants waived jury." In fact, as documented in **#23A**, Charles Jensen was temporarily successful in getting Judge Nadler to reject Defendants' demand for a jury trial, on the utterly frivolous basis that Defendants put the address of the disputed property in the wrong place on their jury request form. As a result of Charles Jensen's repeated attacks on Defendants right to a jury trial, Defendants were denied any input into jury instructions. **#23C** Describes how James Parker was stripped of his Sixth Amendment rights and how the case was decided by Judge Rushing's exclusion of evidence of arbitrary discrimination, and unjustified and unexplained admission of an anonymous compilation of hearsay evidence. One of the most outrageous of the evasive maneuvers by Charles Jensen and Judge Rushing is discussed in **#23E**, which describes how CRC 8.750(a) requiring liberal construction of

> Notices of Appeal and CCP § 916(a) requiring a stay of proceedings in trial court re matters being appealed, were vitiated. (Id. at 6)

Defendants' April 23, 2009 brief cites this misrepresentation in Judge Beaupre's April 17, 2009 Vexatious Litigant ruling:

> "Mr. Parker and Mr. Halliwell have repeatedly relitigated or attempted to relitigate in propria persona, the validity of determinations against them where the findings against them had been finally determined. CCP § 391(b)(2)(I & II)." (4-17-09 Filing at 6:11-13) (Id. at v)

Defendants' April 23, 2009 brief cites an opinion by the author of Judge Beaupre's only cited precedent, which clearly does not support trying to define ongoing fees litigation in a single lawsuit as repeatedly filing "new litigation". Thus Justice Gary E. Strankman writes in *In re Bittaker* (1997) 55 Cal.App.4th 1004, 1009:

> The vexatious litigant statute speaks in terms of "litigation." It defines vexatious litigants by the number of prior unsuccessful "litigations" they have undertaken (five in the past seven

> years), or by the fact of their persistent relitigation of "litigation" finally determined adversely to them. (§ 391, subd. (b).) Its provision for prefiling orders applies to the filing of any "new litigation." (§ 391.7.) (Id. at viii)

Defendants' April 23, 2009 Vexatious Litigant

Proceedings Line Numbered Transcription notes:

> "The real tragedy of this case is that the original plaintiff, Mr. Paxinos, has had to continue to pay his lawyer tens of thousands of dollars to review the materials and appear in court on this vexatious litigation." (4-17-09 Filing at 5:21-23) (Id. at v)

Defendants' April 27, 2009 Motion to Vacate

Judge Beaupre's Vexatious Litigant Finding says:

> In fact, Plaintiff's lawyer's review of documents and appearances in court have nothing at all to do with the so-called vexatious litigation by Defendants (their appeals to courts above the local Appellate Branch). This is so because Charles Jensen has not filed a SINGLE WORD of response to any of the five discretionary appeals listed by Judge Rushing as satisfying the requirements of CCP § 391, nor has he ever appeared in court with respect to them. (Id. at 4)

Defendants' April 27, 2009 Motion to Vacate

Judge Beaupre's Vexatious Litigant Finding says:

> The Order of April 17, 2009 does not reject or even examine Defendants' grounds for legally challenging the landlord's decision to evict them, or count trial court proceedings in MCV 191306 toward CCP § 391's five frivolous litigations in the past seven years requirement. Thus the Order of April 17, 2009 concedes (at 6:4-5): "Mr. Parker and Mr. Halliwell were defendants in the unlawful detainer case and so it does not count as one of the five cases." It is the appeals which "Mr. Parker and Mr. Halliwell have repeatedly relitigated or attempted to relitigate" (Order at 6:11) which form the basis for Judge Beaupre's Vexatious Litigant finding. However, NONE of Defendants' grievances presented at their second (September 25, 2008) or third (November 20, 2008) Appellate Branch Hearing was even perfunctorily adjudicated even ONCE, because of various procedural evasions by Appellate Branch Presiding Judge Rene Auguste Chouteau (such as flouting Defendant Michael Halliwell's right as a party aggrieved by Judge Rushing's denial of standing, to argue this issue on appeal pursuant to CCP § 902). (Id. at 2)

James Parker's June 11, 2009 Affidavit (#5 in Appendix at 414) points out two years of refusal by

the Sonoma County Superior Court to pay the slightest attention to Defendants' well documented charges that Charles Jensen has violated rules for attorneys in Business & Professions § 6068(d), and this Court's actually requiring Defendants to pay for Jensen's fraudulent tactics, in violation of *Clark v Millsap* (1926) 197 Cal 765, 785.

Defendants' March 12, 2009 California Supreme Court Filing (Appendix at 414-415) states:

> James Parker's November 20, 2008 oral remarks, which give the details of eight false statements in Respondent's October 27, 2008 Opposition Brief (Transcript at 13:27 to 17:3), and the lie in Charles Jensen's oral statement (the details of which are set forth in our January 2nd Mandamus Petition at 53:16 to 54:8) which Respondent's Opposition does not try to explain, except to say: "Counsel for Respondent has never been caught lying." James Parker further quoted Respondent's Opposition: "While counsel for respondent has read the appellants' Index of Plaintiff's Misrepresentations and Rules Violations, there was nothing in it worthy of response." James Parker then asked: "Does Charles Jensen wish at this time to explain any of his

latest alleged misrepresentations, or cite anything incorrect in our previous charges of professional misconduct?" When Charles Jensen said nothing, James Parker said to the Court: "Your Honor, I just want it to be said that there was no response." Judge Chouteau responded: "I am indicating there should not be a response." (Transcript at 17:7-23)

Defendants' April 27, 2009 Motion to Vacate

Judge Beaupre's Vexatious Litigant Finding says:

After noting the September 25, 2007 date of the hearing and the names of those attending, here is the entirety of Judge Rushing's first fees order: "Judgment for Plaintiff CHRYSANTHE E. PAXINOS against Defendant JAMES PARKER for attorney's fees in the amount of $10,000." This ruling was upheld by the Appellate Branch, whose Order of October 7, 2008 describes the same locational and attendance information for its hearing as Judge Rushing's Order, but says only this about the Order: "Appellants fail to demonstrate any reversible error with respect to the September 25, 2007 attorney fee order." Judge Rushing's second fees order gives locational and attendance information for the May 6, 2008 Hearing, but makes only this barebones statement about fees (with NOTHING about the reasons for them): "The Plaintiff's motion for attorneys fees for Plaintiff CHRYSANTHE E. PAXINOS as to Defendant JAMES PARKER only is granted in the

amount of $20,680 and $40.00 for filing fee." This fees award was ONLY for reading Defendants' briefs, with no link to any work product, and no link for the briefs Charles Jensen read, to any issue on which Plaintiff has been found to be the prevailing party. The Appellate Branch December 5, 2008 ruling upholding Judge Rushing's $20,720 fees award, could just as well have been stapled to a first page of case identifiers for any fees appeal that came before them. It said: "The trial court's attorney fee Order is **AFFIRMED**. De Novo review indicates that an award of attorney's fees was proper and review of the record under the abuse of discretion standards indicates that the amount of attorney's fees is also proper." (Id. at 2-3)

**C. Deliberately Overloading Defendants**

**6. Premature OEX & CCP § 391 pressure**

Defendants' March 30, 2009 Memorandum (Status of Updated Mandamus Petition) says:

> The First District's Order of March 26, 2009, does not purport to find that S170538 is "substantially identical to a prior petition." Such a holding would be very difficult to defend in light of this Petition's focus on the Fourth and Fifth Front procedural squeeze created by Judge Rushing's $19,000 attorney fees award (not a factor in Defendants' procedural concerns until a sequence of events starting on

> February 2, 2009) and Judge Rushing's "vexatious litigant" initiative (which was filed on February 9, 2009, long after Defendants' previous Mandamus Petitions were filed). (Id. at 2)

Defendants' April 3, 2009 Appendix re Denial of Mandamus by the Court of Appeal (Appendix at 343) cites a key precedent contrary to the deliberate "jamming" of Defendants in *Paxinos v Halliwell & Parker* manipulating various briefing schedules to create a "two front" squeeze. *Gamet v Blanchard* (2001) 91 Cal.App.4th 1276, 1289 held: "The judge's comments that he could 'jam' Gamet and that he wanted to 'keep the heat on,' when combined with the unexplained judgment dismissing the action shortly thereafter, seemed arbitrary and created the appearance of substantial unfairness." (Id. at 9)

Defendants' April 27, 2009 Motion to Vacate Judge Beaupre's Vexatious Litigant Finding says:

> The Order (4:2-5) criticizes Defendants for seeking to separate out a fees appeal for separate consideration, and asserts: "The only conceivable object of this tactic is delay." However (as #10 demonstrates), it was a delay in transcript preparation which was the basis for Defendants' separate hearings motion, and it was a three-month-long refusal of the Appellate Branch to update the Chronological Index that caused unnecessary delay which brought the hearings on the $10,000 and $20,720 fees award so close together, that it was impossible for Defendants to properly handle their overlapping briefing and hearing preparation tasks. (Id. at 5-6)

Defendants' April 27, 2009 Response to Judge Beaupre's Question Presented #10 observes:

> There is no reason that it should have taken more than three months to prepare the 13-page transcript of the September 25, 2007 fees hearing. This delay by court employees is the basis for Defendants' seeking to separate consideration of their July 24, 2007 (jury trial) appeal, from the fees issue, as their January 24, 2008 Appeal Transcript Appendix notes (2:16-19):
>
> > At the January 24, 2008 Appeal Hearing problems relating to documenting these events were discussed. Michael Halliwell continued his dialogue with Judge Chouteau: "There is a second

> matter that I submitted to Judge Boyd relating to the late availability of the transcripts that we relate to the fees aspect that was consolidated with this. The transcripts came in so late that I'm asking for separate consideration of the matters that related to the transcript of September 25th, which became available to us on January 15th." (Transcript at 3:7-13)
>
> Judge Chouteau replied: "This is a different issue which is on our June calendar." (Ibid at 3:15-16)

In their April 23, 2009 brief, Appellants quote a supporting authority in Judge Beaupre's own cited precedent, which shows that forcing consolidation of appeals in the above circumstances violated Appellants' rights. *State Farm Insurance Co. v. Superior Court* (1956) 47 Cal 2d 428, 430, 432 held:

> Petitioner concedes that "actions may be consolidated, in the discretion of the court, whenever it can be done without prejudice to a substantial right." (Code Civ. Proc., § 1048.) However, as petitioner contends, the consolidation here does result in such prejudice to petitioner. . . . . We therefore conclude that petitioner is entitled to a writ of mandate

ordering respondent to sever its declaratory relief action from the personal injury actions. (Id. at vi)

Defendants' June 11, 2009 Claim of Exemption & Supporting Affidavit re $833 Seizure states:

> Defendants' May 18, 2009 Certiorari Petition Appendix quotes an important ruling from the bench (at the January 20, 2009 OEX hearing) by the most recent former Presiding Judge of Sonoma County Superior Court, Robert S. Boyd: "**So now that I am beginning to get a clearer picture of the whole story, not just this Court's role, which was enforcement of the judgment, I believe that the Court was premature in the finding of contempt. At this time I am going to vacate the finding of contempt, as that matter of enforcement of the $20,000 is on appeal.**" (Transcript at 18:2-8) This levy to enforce this $20,720 judgment flies in the face of Judge Robert Boyd's April 17, 2009 ruling that enforcement of this judgment is still premature.
>
> On April 17, 2009, Judge Dean Beaupre also issued an Order, presuming to subject every action taken by Defendants in any aspect of this case to prior approval by the current Presiding Judge of the Sonoma County Superior Court, Knoel Owen. Defendants tried to clarify this Order with a motion for reconsideration, but Judge Beaupre has not

> responded. On May 13, 2009 Defendants appealed Judge Beaupre's Order, so it has no current force (until and unless it is upheld on appeal). In the past six weeks, this complicated procedural situation has been the subject of several submissions to Presiding Judge Owen, all of which are still unanswered. (Id. at 1)

**7. Continued disregard of automatic stay**

The central issue in all of the attorney fees awards piled one atop another is the Due Process protection of the Fourteenth Amendment. California law bars enforcement of judgments consisting entirely of attorney fees awards and other costs until appeals from such awards have been exhausted. For at least eight decades no state court has questioned the final word on Due Process issues of the United States Supreme Court, because *Brinkerhoff-Faris Trust & Savings Co. v. Hill* (1930) 281 U.S. 673, 681, notes that "it may be observed that the plaintiff's claim is one arising under the federal Constitution

and, consequently, one on which the opinion of the state court is not final." However, Judge Rushing's repeated fees enforcement activity is based on the concept that such awards become final once the Appellate Branch of her Superior Court has reviewed them.

Defendants' February 9, 2009 Federal Issue Review cites a key case that rejects this usurpation:

> Whether the state court has denied to rights asserted under local law the protection which the Constitution guarantees is a question upon which the petitioners are entitled to invoke the judgment of this Court. Even though the constitutional protection invoked be denied on non-federal grounds, it is the province of this Court to inquire whether the decision of the state court rests upon a fair or substantial basis. If unsubstantial, constitutional obligations may not be thus evaded. (*Broad River Power Co. v South Carolina* (1930) 281 U.S. 537, 540) (Id. at 9:16-25)

Judge Rushing has repeatedly flouted the holding of *Ziello v Superior Court* (1999) 75 Cal.App. 4th 651, 654-655 that a judgment consisting entirely

of attorney fees "is solely for costs within the meaning of Code of Civil Procedure sec 917.1(d). Accordingly, no bond is required to stay enforcement of that order pending appeal." This holding is based on *Nielsen v Stumbos* (1990) 226 Cal.App.3d 301, 303, which affirms that "the fees are costs and the filing of a Notice of Appeal stays execution without the posting of an undertaking." (See Appendix at 404-405.)

Defendants' June 11, 2009 Claim of Exemption & Supporting Affidavit re $833 Seizure includes James Parker's Affidavit of June 11, 2009, which affirms:

> 1. James Parker resides at 271 E. Cotati Ave, Cotati CA 94931 [along with] Michael Halliwell, who is legally bound to share equally in any adverse judgment for legal costs.
>
> 2. The reality of Defendants' cost sharing agreement has never been disputed by plaintiff or any judge. Michael Halliwell has

the same right that I do to defend against financial injury without Due Process of Law.

3. At no point in this litigation has the normal court process of noticed motion and a briefing cycle been available to Defendants. Charles Jensen's legal rationale for piling fee award upon fee award is that Defendants have somehow been in control of proceedings. This assertion is diametrically opposite to the true situation in this case.

4. I have no doubt that this $833 asset seizure is "small potatoes" for someone who earns $230 per hour, as Charles Jensen does. I believe the main reason for this harassment is to try to disrupt Defendants' preparation and prosecution of their appeals invoking their Fourteenth Amendment rights to Due Process of Law and Equal Protection under State Law.

5. At no time in these two years of proceedings has any judge of the Sonoma County Superior Court paid the slightest attention to Defendants' well documented charges of violations of the code of conduct for attorneys set forth in Business and Professions Code Section 6068(d). Since *Clark v Millsap* (1926) 197 Cal 765, 785, bars payment for an attorney's fraudulent activity, unresolved charges of misconduct against Charles Jensen are a sufficient basis for denying him any payment whatsoever.

> 6. Draconian confiscations of the sort cited above, amount to a total negation of the protections for debtors, which have existed in this country ever since the American Revolution. *Armstrong v Manzo* (1965) 380 U.S. 545, 552 and *Mathews v Eldridge* (1976) 424 U.S. 319, 333, require a meaningful hearing at a meaningful time, before anyone in this country can be deprived of any property. The fees awards piled upon prior fees awards in this case are designed as a punishment for Defendants' efforts to exercise their federal constitutional rights. There is simply no justification for any court's lending its support to this sort of intimidation. (Id. at 2)

Defendants' analysis of Judge Rushing's July 7, 2009 denial of James Parker's Claim of Exemption (Appendix at 410) notes that Parker's Affidavit of June 5, 2009 pointed out that his previously disclosed monthly wages (which were $345.99 in April 2009, when Charles Jensen's Writ of Execution was issued) and Unemployment Benefits (about $500 in that month) fully accounted for the money he was accumulating to pay for his share of rent and

expenses, when Charles Jensen cleaned out his Redwood Credit Union funds.

Judge Rushing repeatedly allowed Plaintiff's counsel to avoid stating his reasons for opposing a Claim of Exemption, as required by CCP section 703.560(b) other than "Claimant's citations are not applicable." After failing to secure Judge Rushing's approval of his excuse for not citing facts which justified his Opposition, because Defendant's Claim constituted "new vexatious litigation" barred by CCP sec 391, Charles Jensen's July 7, 2009 defense of his Opposition (see Appendix at 405-406) consisted only of his saying:

> But nowhere in the purported papers are there statutory claims that would be sustained for a Claim of Exemption, which is why my papers simply say that there is no stay. There is not. And that the citations are not applicable. They are not. And I'll leave it at that, Your Honor. (Transcript at 15:6-11)

Defendant James Parker's analysis of Judge Rushing's July 7, 2009 denial of his Claim of Exemption (Appendix at 407-408) cites the holding of *Betz v Pankow* (1993) 16 Cal.App.4th 931, 938:

> As a general rule, "the perfecting of an appeal stays [the] proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby, including enforcement of the judgment or order ...." (§ 916, subd. (a).) The purpose of the rule depriving the trial court of jurisdiction in a case during a pending appeal is to protect the appellate court's jurisdiction by preserving the status quo until the appeal is decided.

At the July 7, 2009 Hearing James Parker cited Judge Boyd's ruling on the applicability of CCP Sec 916(a):

> Judge Boyd in OEX hearings stayed those hearings as premature because he agrees federal appeals are relevant. (Transcript at 11:27 to 12:1)
>
> Judge Rushing responded on by saying:
>
> I believe he's wrong. I just have to say it. This is before me now. Each judge has to

> decide for themselves, and so I – I'm ruling against you on that point. (Ibid at 12:2-4)

Even though a successful appeal to the U.S. Supreme Court could overturn any of her fees awards on Due Process grounds, Judge Rushing argued at the previous hearing that this doesn't make any difference, with respect to the Sonoma County Superior Court's authority to immediately enforce an attorney fees judgment. Judge Rushing told James Parker: "You could file things to the U.S. Supreme Court if you want to. That has nothing to do with the enforceability of judgments here, because you only have one right of appeal; that's to the Appellate Division." (February 10, 2009 Transcript at 8:8-12)

In refusing to address governing precedents on the scope of CCP § 916(a) stay provisions, Judge Rushing implies that James Parker is not talking

about a substantive issue, and proclaims: "I don't have to give reasons." (July 7, 2009 Transcript at 13:11-12) James Parker argued: "Until our appeal is fully heard and fully resolved, the Court has no jurisdiction to act in this matter." (Ibid at 13:22-23) (See Appendix at 409.)

At the July 7, 2009 Hearing, James Parker made an unsuccessful request for a postponement to allow Defendants to cope with the problem caused by Charles Jensen's continuing evasiveness. He said:

> Well, Your Honor, you're – essentially Charles Jensen is saying because he claims citations are not applicable, we as pro pers have to research the law from A to Z to discover why they are not applicable. We say that he's required specifically ten days before a hearing goes forward, and the reasons for bringing this hearing, why Claimant's citations are not applicable. We did the same thing on the first $10,000 judgment. He said the – well, he said that – it didn't apply, but he didn't say why. [So], we need to ask for a stay. (Ibid at 15:23 to 16:5) (See Appendix at 413.)

Defendant James Parker then connected Charles Jensen's evasive approach to the July 7, 2009 hearing with Jensen's misconduct in earlier proceedings, which had been tolerated by Judge Rushing:

> And we have stated the reasonings in our – all our documents why we feel this court is very sympathetic to Mr. Jensen. And I do not want to embarrass the Court by going through that material, but the Court knows what that material is. And it would seem to me the Court would bend over backwards not to give that impression, but the Court continues never [requiring] Mr. Jensen to say anything in substantive response. All he does is spout vagaries, puffery, exaggerations, and he's never really been called on it. (Transcript at 18:6-14)

James Parker's Claim of Exemption (at 13) cited *Mann v Thalacher* (2001) 246 F.3d 1092, 1096-1097, which noted the "federal constitutional right to be tried before an impartial trier of fact." Judge Rushing became increasingly irritated as James Parker began to address this subject and referred to

past misdeeds of Charles Jensen, which have been extensively documented in the Case Record. James Parker continued: "We believe Mr. Jensen's guilty of fraud and perjury –" (Ibid at 18:14-15) Judge Rushing interrupted at this point with an exasperated "Okay." (Ibid at 16) James Parker resumed: "– and we've made that claim." (Ibid at 18:17) Judge Rushing again interrupted with an even more emphatic "Okay." (Ibid at 18:18) James Parker protested Judge Rushing's interruptions: "Your Honor, and you're trying to shut us down." (Ibid at 18:19-20) In his Claim of Exemption (at 12), James Parker had cited the basis for this protest, the "elementary requirements of impartiality taken for granted in every judicial proceedings" (affirmed in *Commonwealth Coatings Corp. v Casualty Co.* (1968) 393 U.S. 145, 148). But Judge Rushing would hear no more, saying: "That is now enough. I have been

more than patient. The motion for Claim of Exemption is denied. The hearing is over." (Ibid at 18:21-23) (See Appendix at 419-420.)

## REASON FOR GRANTING CERTIORARI

The Appendix of Defendants' May 13, 2009 Notice of Appeal from the Vexatious Litigant Finding of April 17, 2009, criticizes the refusal of either Judge Rushing's fees awards, or the Appellate Branch rulings upholding them, to say anything at all about the relevant governing precedents or factual issues, by citing the U.S. Supreme Court's *Boddie v Connecticut* (1971) 401 U.S. 371, 375 opinion:

> It is to courts, or other quasi-judicial official bodies, that we ultimately look for the implementation of a regularized, orderly process of dispute settlement. Within this framework, those who wrote our original Constitution, in the Fifth Amendment, and later those who drafted the Fourteenth Amendment, recognized the centrality of the concept of due process in the operation of this

> system. Without this guarantee that one may not be deprived of his rights, neither liberty nor property, without due process of law, the State's monopoly over techniques for binding conflict resolution could hardly be said to be acceptable under our scheme of things. Only by providing that the social enforcement mechanism must function strictly within these bounds can we hope to maintain an ordered society that is also just. It is upon this premise that this Court has through years of adjudication put flesh upon the due process principle.

As far as the Case File of *Paxinos v Halliwell & Parker* is concerned, this Notice of Appeal does not exist, because the most recent and the current Presiding Judges of Sonoma County Superior Court have both refused to allow the filing of anything, which challenges applications of Judge Beaupre's Order of April 17, 2009. If there is any flesh on the due process principle in this situation, now is the time take cognizance of another fundamental principle: "All that is necessary for the triumph of evil is that good men and women do nothing."